

# Enforcement Policy Overview



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Office of Enforcement  
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Item 6

The goal of the Enforcement Policy is to protect and enhance the quality of the waters of the State by defining an enforcement process that addresses water quality problems in the most efficient, effective, and consistent manner.



**Goals include:  
Identifying the  
greatest needs**

**Detering harmful  
conduct**

**Encouraging the  
regulated  
community to  
anticipate,  
identify, and  
correct violations**

**Achieving  
maximum water  
quality benefits**

**Protecting the  
public**



# What the Policy Does

Establishes requirements & procedures for:

1. Establishing an enforcement presence as a deterrent
2. Identifying & correcting violations
3. Collecting evidence to support enforcement actions
4. Targeting & ranking enforcement priorities



# Enforcement Policy Highlights

*Establishes a process for ranking enforcement priorities based on actual or potential impact to the beneficial uses or the regulatory program, and for using progressive levels of enforcement , as necessary, to achieve compliance.*

# Enforcement Policy Highlights (cont.)

*Establishes an administrative civil liability assessment methodology to create a fair, transparent, and consistent statewide approach to liability assessment.*

# Enforcement Policy Highlights (cont.)

*Recognizes the use of alternatives to assess civil liabilities, such as supplemental environment projects (SEPs), compliance projects, and enhanced compliance actions, but requires standards for approving alternatives to ensure they provide the expected benefits.*

# Enforcement Policy Highlights (cont.)

*Emphasizes recording enforcement data and communicating enforcement information to the public and regulated community.*



# Promoting Fair, Firm & Consistent Enforcement

Water Boards shall strive to be fair, firm & consistent in taking enforcement actions statewide while recognizing the unique facts of each case.



# Promoting Environmental Justice

- Enhances meaningful public participation in enforcement matters;
- Improves data collection & availability of violation & enforcement information for underserved communities; and,
- Enhances cross-media coordination & accountability.



# Prioritizing Enforcement

## **Step 1: Ranking Violations (Priorities 1-3)**

Class 1 priority violations pose an immediate and substantial threat to water quality & have the potential to cause harmful effects to human health or the environment.

Violations involving those who intentionally avoid compliance with water quality regulations & orders are also class 1 priority violations because they pose a threat to the integrity of the Water Boards' regulatory programs.

# Prioritizing Enforcement (cont.)

## **Step 2: Identifying the highest priority cases**

- ✓ The magnitude of violations & threat to beneficial uses
- ✓ Did violations affect a sensitive water body?
- ✓ Did violations continue after being brought to the attention of the entity?
- ✓ Is there a good-faith effort to correct the violation?
- ✓ Are there facts mitigating the violations?
- ✓ What is the strength of the evidence?
- ✓ Are enforcement resources available?

# Prioritizing Enforcement: Office of Enforcement Assistance

The Office of Enforcement has an attorney liaison assigned to each regional board.

The attorney liaison participates in a monthly meeting with the compliance assurance unit assisting with prioritizing cases for enforcement.



# Enforcement Report Card

## Mandatory Minimum Penalty Actions

2013

3,322 violations

2008

12, 248 violations\*

\* Outset of MMP initiative

# Enforcement Report Card

## ACL Actions (not addressing MMPs)

### Before the Policy

2008 – 87 actions

2009 – 88 actions

### After the Policy

2011- 97 actions

2012 – 104 actions

# Enforcement Report Card

## (cont.)

Total dollar amounts of ACLs (not including MMPs)

Year	Total	
2008	<b>\$6,485,527</b>	before policy
2009	<b>\$13,936,110</b>	before policy
2011	<b>\$9,254,427</b>	after policy
2012	<b>\$17,643,898</b>	after policy

# Assessing Administrative Civil Liabilities

The Policy recognizes, in liability determinations, each Regional Board, and each case, is unique.

We must balance fairness and consistency in a transparent manner.

# Methodology for Fairness, Consistency & Transparency

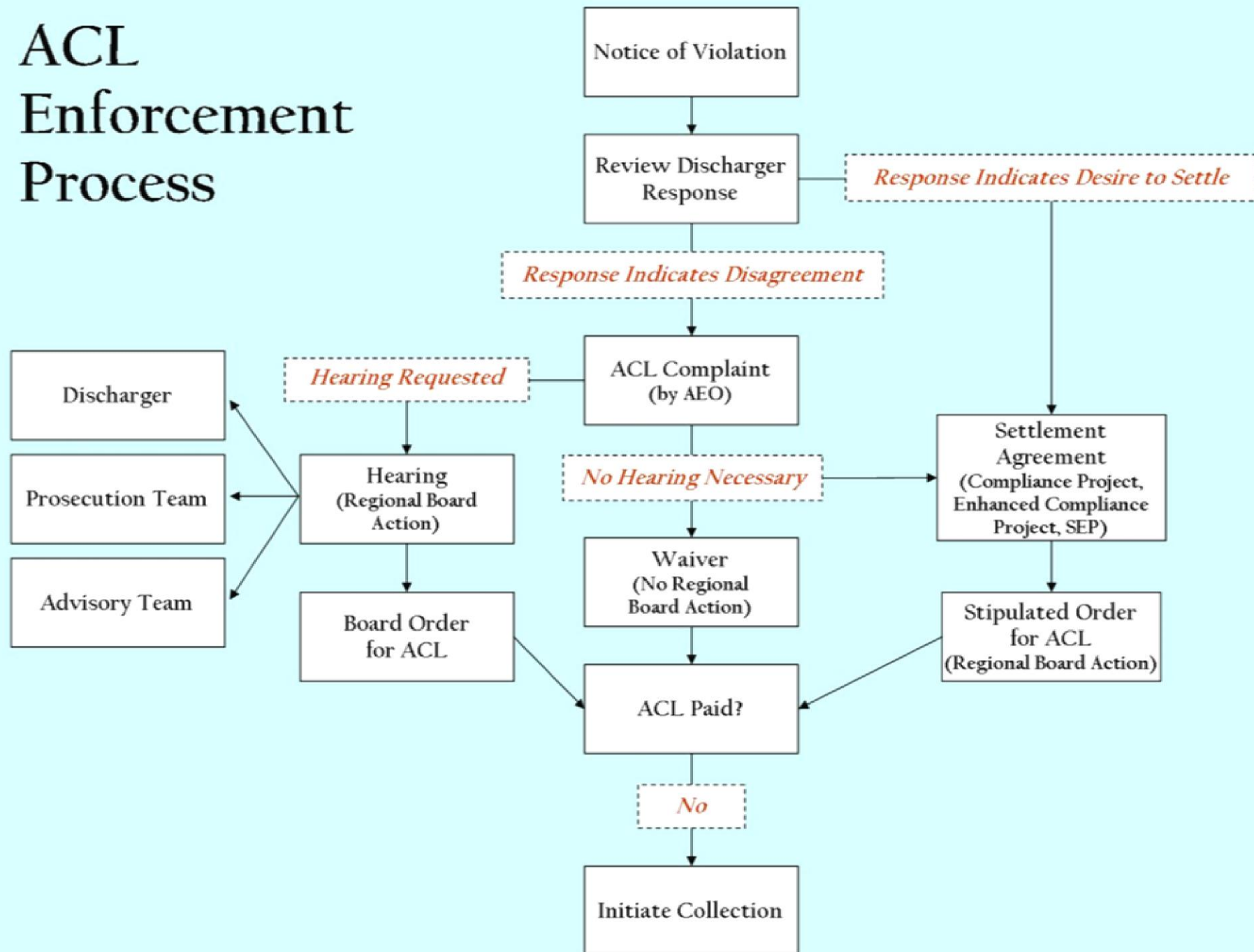
- Fair, consistent & transparent liability amounts;
- Eliminates any economic or competitive advantage obtained from noncompliance; and,
- **Reasonable relationship to:**
  - The gravity of the violation
  - The harm to beneficial uses
  - Integrity of the regulatory programs
- Deters future violations, both for the violator & for the regulated community.



# Separation of Functions

- Principles of due process require that the Water Boards ensure that staff advocating a specific result in enforcement proceedings are different than staff advising the Water Boards in those proceedings. The separation of these different roles is called a **separation of functions**.
- Your enforcement staff and Office of Enforcement comprise the **Prosecution Team**.

# ACL Enforcement Process



# Stipulated Orders

- Negotiated by enforcement staff/OE consistent with penalty methodology;
- Memorializes obligation of discharger to pay/ memorializes agreement of discharger to do compliance projects or supplemental environmental projects (SEPs);
- Can provide for actions by discharger to attain compliance in addition to payment of penalties;

# Stipulated Orders (cont.)

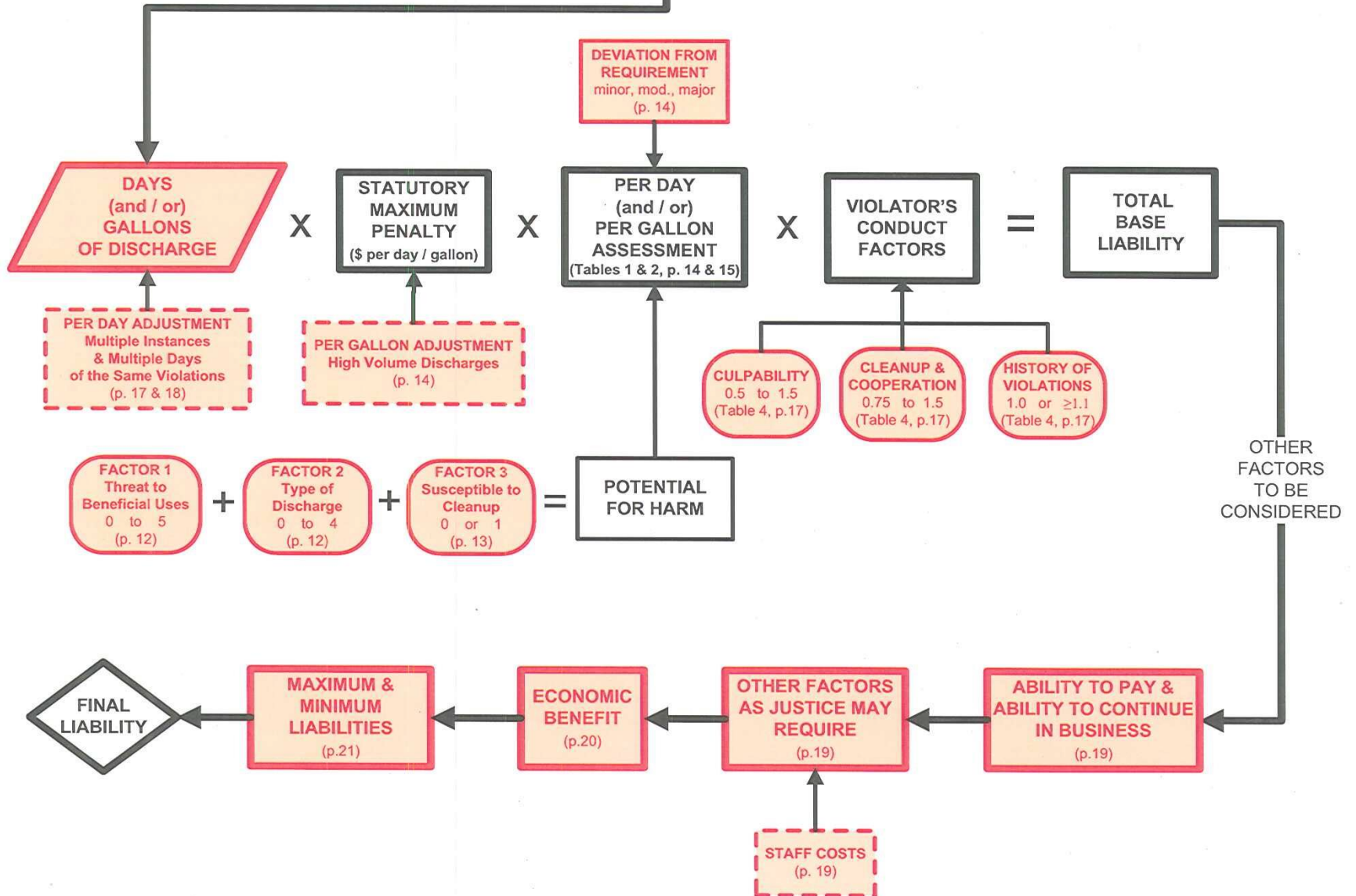
- Waives right to hearing on allegations;
- Usually no admission of liability but Order is evidence of prior enforcement action;
- Stipulation is between discharger & prosecution team; and,
- Agreement becomes a Regional Board order upon adoption by a Regional Board or its Executive Officer (if delegated with that authority).

# Penalty Methodology

- The methodology relies on the use of matrices to arrive at an initial liability;
- Matrices are based on potential for harm and deviation from the requirement;
- One set of matrices are used for discharge violations (per gallon and per day assessments); and,
- A different matrix is used for non-discharge violations (per day assessment).



# PENALTY CALCULATION FOR DISCHARGE VIOLATIONS



# Calculating Penalties: A Methodology

## Step 1: Determine Potential Harm for Discharge Violation

- **Factor 1:** Harm or potential harm to beneficial uses (0 to 5)
- **Factor 2:** Physical, chemical, biological or thermal characteristics of the discharge (0 to 4)
- **Factor 3:** Susceptibility to Cleanup or Abatement (0 to 1)
- Sum of values for each factor determines the potential for harm (1 to 9)

# Calculating Penalties: A Methodology (cont.)

**Step 2:** Per gallon & per day assessments for discharge violations using matrix to find per gallon factor

- ✓ Effluent limit violations assessed on per day basis
- ✓ Large scale release warrants per day and per gallon assessment

**Step 3:** (alternative to Step 2 ) Per day assessments for non-discharge violations

# Calculating Penalties: A Methodology (cont.)

## Step 4: Adjustment Factors

- Culpability (multiplier between .5 to 1.5)
- Cleanup/Cooperation (multiplier between .75 to 1.5)
- History of violations (multiplier of 1.1 or greater)
- Considerations for multiple violations and multiple day violations

# Calculating Penalties: A Methodology (cont.)

## Step 5 - Total Base Liability Amount for Discharge Violations

- $(\text{Per Day Value} + \text{Per Gallon Value}) \times (\text{culpability factor}) \times (\text{cleanup and cooperation factor}) \times (\text{history of violations factor})$



# Calculating Penalties: A Methodology (cont.)

- **Step 6:** Ability to pay & ability to continue in business
- **Step 7:** Other factors as justice requires
  - ✓ Costs of investigation & enforcement
- **Step 8:** Economic benefit
- **Step 9:** Maximum & minimum liability amounts
- **Step 10:** Final liability amount

To assist staff & the Water Boards with this methodology, a simple spreadsheet is used.

al Harm for Discharge Violations  
 eristics of the Discharge  
 ibility to Cleanup or Abatement  
 on from Standard  
 ine Harm & per Gallon/Day..."  
 nto the Yellow highlighted fields

Select Item 5 = Major  
 Select Item 3 = Discharged material poses above moderate  
 Select Item < 50% of Discharge Susceptible to Cleanup or A  
 Select Item Moderate

Select Item 5 = Major  
 Select Item 3 = Discharged material poses above moderate  
 Select Item < 50% of Discharge Susceptible to Cleanup  
 Select Item Moderate

South San Luis Obispo County Sanitary District		Violation 1		Violation 2	
Potential Harm Factor (Generated from Button)	9				
Per Gallon Factor (Generated from Button)	0.5				
Gallons	1,138,825				
Statutory / Adjusted Max per Gallon (\$)	2.00				
Total		\$	1,138,825	\$	
Per Day Factor (Generated from Button)	0.5				
Days	2				
Statutory Max per Day	10000.00				
Total		\$	10,000	\$	
Per Day Factor	0.35				
Days	180				
Statutory Max per Day	\$ 1,000				
Total		\$	63,000.00	\$	
ial Amount of the ACL		\$	1,211,825.00	\$	
Culpability	1.1	\$	1,333,007.50	\$	
Cleanup and Cooperation	1	\$	1,333,007.50	\$	
History of Violations	1	\$	1,333,007.50	\$	
al Base Liability Amount		\$	1,333,007.50		
Ability to Pay & to Continue in Business	1	\$	1,333,007.50		
Other Factors as Justice May Require	1	\$	1,333,007.50		
Staff Costs	\$ 50,000	\$	1,383,007.50		
Economic Benefit	\$ 177,209	\$	1,383,007.50		
Minimum Liability Amount	194,930				
Maximum Liability Amount	\$ 11,388,250				
al Liability Amount		\$	1,383,007.50		

# Alternatives to Assessing Monetary Liabilities

1. **Supplemental Environmental Projects (SEPs):** An environmentally beneficial project that the person is not otherwise obligated to perform or would not be undertaken in the absence of an enforcement action.
2. **Compliance Projects:** Applies only to resolve all or a portion of an mandatory minimum penalty against a publicly owned treatment works serving a small community with financial hardship (10,000 residents or fewer) in a rural county.
3. **Enhanced Compliance Actions (ECAs):** A project that allows a discharger to make capital or operational improvements beyond those required by law & is separate from projects designed to bring a discharger into compliance.

# Enforcement Reporting

The *2012 Enforcement Report* is available at the State Board website.

[www.waterboards.ca.gov/publications\\_forms/publications/2012\\_13385report/](http://www.waterboards.ca.gov/publications_forms/publications/2012_13385report/)

The Water Boards' Enforcement Reports are included in the *Annual Performance Report* under the following link:

[www.waterboards.ca.gov/about\\_us/performance\\_report\\_1112/enforce/](http://www.waterboards.ca.gov/about_us/performance_report_1112/enforce/)

**Fair**

**Consistent**

**Transparent**

